

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT FRAZIER,

Plaintiff,

v.

JULIA BARNETT, et al.,

Defendants.

CASE NO. C23-0690JLR

ORDER

Before the court are: (1) *pro se* Plaintiff Robert Frazier’s amended 42 U.S.C. § 1983 prisoner civil rights complaint (Am. Compl. (Dkt. # 12)); (2) Mr. Frazier’s motion for a temporary restraining order (“TRO”) and preliminary injunction (TRO Mot. (Dkt. # 13)); (3) Magistrate Judge Brian A. Tsuchida’s report and recommendation (R&R (Dkt. # 15), in which he recommends that the court dismiss Mr. Frazier’s amended complaint and deny Mr. Frazier’s motion for a TRO and preliminary injunction; (4) Mr. Frazier’s objections to Magistrate Judge Tsuchida’s report and recommendation (Obj. (Dkt. # 16)); and (5) Magistrate Judge Tsuchida’s supplemental report and recommendation (Supp.

R&R (Dkt. # 17)). Because Magistrate Judge Tsuchida declined to serve Defendants, none of the Defendants have responded to Mr. Frazier's complaints, motion for a TRO and preliminary injunction, or objections. (*See* 5/24/23 Order (Dkt. # 8) (declining to serve Mr. Frazier's complaint and granting leave to amend); *see generally* Dkt.) Having carefully reviewed all of the foregoing, along with the relevant portions of the record and the governing law, the court ADOPTS Magistrate Judge Tsuchida's report and recommendation and supplemental report and recommendation, OVERRULES Mr. Frazier's objections, DISMISSES Mr. Frazier's second amended complaint, and DENIES Mr. Frazier's motion for a TRO and preliminary injunction.

II. BACKGROUND¹

Mr. Frazier, who is proceeding *pro se* and *in forma pauperis* ("IFP"), is currently confined at the Monroe Correctional Complex-Twin Rivers Unit ("MCC-TRU"). (Compl. (Dkt. # 6).) He alleges that Defendants have violated his constitutional rights and the Americans with Disabilities Act by failing to provide him adequate medical care. (*Id.*; *see also* Am. Compl. (Dkt. # 12); 2d Am. Compl. (Dkt. # 14).)

Mr. Frazier originally filed this action on May 10, 2023. (Prop. Compl. (Dkt. # 1).) On May 24, 2023, Magistrate Judge Tsuchida granted Mr. Frazier's motion for leave to proceed IFP; declined to serve Mr. Frazier's original complaint because the

¹ The court ADOPTS the recitation of background and procedural facts set forth in Magistrate Judge Tsuchida's report and recommendation and supplemental report and recommendation. (*See* R&R at 1-7; Supp. R&R at 1-4.)

1 | allegations therein lacked sufficient detail and factual support; and granted Mr. Frazier
2 | leave to amend his complaint. (IFP Order (Dkt. # 5); 5/24/23 Order.)

3 | On June 26, 2023, Mr. Frazier filed his first amended complaint pursuant to
4 | Magistrate Judge Tsuchida's order. (Am. Compl.) Then, on July 8, 2023, Mr. Frazier
5 | filed his motion for a TRO and preliminary injunction. (TRO Mot.) Mr. Frazier filed a
6 | second amended complaint on July 10, 2023, and the Clerk entered it on the docket on
7 | July 11, 2023. (2d Am. Compl.; *see* Dkt.) The second amended complaint is identical to
8 | the first amended complaint except that it includes several pages of additional factual
9 | allegations. (*Compare* Am. Compl., *with* 2d Am. Compl.)

10 | On July 12, 2023, Magistrate Judge Tsuchida issued a report and recommendation
11 | recommending dismissal of the first amended complaint and denial of Mr. Frazier's
12 | motion for a TRO and preliminary injunction. (R&R.) Mr. Frazier timely objected to
13 | that report and recommendation. (*See* Obj.) On July 20, 2023—the same day that the
14 | Clerk entered Mr. Frazier's objections on the docket—Magistrate Judge Tsuchida issued
15 | a supplemental report and recommendation that addresses the new factual allegations in
16 | the second amended complaint and again recommends dismissal of this case and denial
17 | of the motion for a TRO and preliminary injunction. (*See* Dkt.; Supp. R&R.) Mr. Frazier
18 | has not filed objections to the supplemental report and recommendation. (*See* Dkt.)

19 | **III. ANALYSIS**

20 | A district court has jurisdiction to review a Magistrate Judge's report and
21 | recommendation on dispositive matters. Fed. R. Civ. P. 72(b). "A judge of the court
22 | may accept, reject, or modify, in whole or in part, the findings or recommendations made

1 by the magistrate judge.” 28 U.S.C. § 636(b)(1). “The statute makes it clear that the
2 district judge must review the magistrate judge’s findings and recommendations de novo
3 if objection is made, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114,
4 1121 (9th Cir. 2003) (*en banc*). Because Mr. Frazier is proceeding *pro se*, the court must
5 interpret his complaint and objections liberally. *See Bernhardt v. Los Angeles Cnty.*, 339
6 F.3d 920, 925 (9th Cir. 2003).

7 In his first report and recommendation, Magistrate Judge Tsuchida recommends
8 that the court (1) dismiss Mr. Frazier’s amended complaint and (2) deny Mr. Frazier’s
9 motion for a TRO and preliminary injunction. (*See generally* R&R.) Specifically, Judge
10 Tsuchida recommends that the court dismiss Mr. Frazier’s amended complaint because
11 he failed to identify with specificity the persons who he alleges have violated his
12 constitutional rights, the harms he suffered, and the causal connection between each
13 Defendant’s actions and Mr. Frazier’s alleged harms. (*Id.* at 9-10.) He recommends that
14 the court deny further leave to amend because Mr. Frazier received instructions in the
15 May 24, 2023 order on how to cure the deficiencies in his original complaint but failed to
16 do so. (*Id.* at 11-12; *see* 5/24/23 Order.) Magistrate Judge Tsuchida also recommends
17 that the court deny the motion for a TRO and preliminary injunction because Mr. Frazier
18 based that motion on factual allegations that he did not make in his amended complaints
19 and failed to make the requisite showings that he is likely to succeed on the merits of his
20 claim and suffer irreparable harm in the absence of preliminary relief. (*Id.* at 12-15
21 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 24 (2008))). In his
22 supplemental report and recommendation, Magistrate Judge Tsuchida evaluates the new

1 allegations that Mr. Frazier made in his second amended complaint and recommends
2 dismissal of that complaint for failure to state a claim and denial of the motion for
3 injunctive relief for the same reasons set forth in the first report and recommendation.
4 (*See* Supp. R&R.)

5 Mr. Frazier’s objections to Magistrate Judge Tsuchida’s first report and
6 recommendation focus on four areas.² First, he argues that that Magistrate Judge
7 Tsuchida improperly reviewed his pleadings “under the high bar of drafting any
8 documents as artfully as any attorney could.” (Obj. at 1; *see also id.* (urging the court not
9 to dismiss the amended complaint based on technical deficiencies).) Indeed, a federal
10 court must interpret a *pro se* litigant’s complaint and objections liberally. *See Bernhardt*,
11 339 F.3d at 925. The court concludes, on de novo review, that Magistrate Judge
12 Tsuchida provided Mr. Frazier appropriate leeway when evaluating his first and second
13 amended complaints. This court, too, has liberally interpreted Mr. Frazier’s complaints
14 and objections when reviewing the reports and recommendations. Thus, the court
15 overrules this objection.

16 Second, Mr. Frazier argues that Magistrate Judge Tsuchida wrongfully
17 recommended that the court deny injunctive relief. He contends that (1) Magistrate Judge
18 Tsuchida failed to understand that he has already suffered serious injuries and is in

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20 ² Because Mr. Frazier did not file objections to the supplemental report and
21 recommendation (*see* Dkt.), the court need not review de novo the recommendations Magistrate
22 Judge Tsuchida made therein. *Reyna-Tapia*, 328 F.3d at 1121. Nevertheless, the court has
carefully reviewed the supplemental report and recommendation and agrees with Magistrate
Judge Tsuchida’s findings and conclusions.

1 danger of further injury in the absence of a TRO and preliminary injunction (Obj. at 2-3)
2 and (2) an injunction would be in the public interest (*id.* at 3-4). Mr. Frazier does not,
3 however, address the primary reason that Magistrate Judge Tsuchida recommended
4 denial of his motion: because it is based on allegations that Mr. Frazier failed to make in
5 his amended complaint. (*Id.*; *see* R&R at 12-15.) On de novo review, the court
6 concludes that Magistrate Judge Tsuchida's reasoning for recommending that the court
7 deny Mr. Frazier's motion for injunctive relief is persuasive in light of the record before
8 it. Therefore, the court also overrules this objection.

9 Third, Mr. Frazier argues that Magistrate Judge Tsuchida was too strict in
10 applying the pleading standard set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
11 570 (2007). (Obj. at 5-6.) The court has reviewed de novo Magistrate Judge Tsuchida's
12 recommendation that the court dismiss Mr. Frazier's amended complaint, finds that
13 Magistrate Judge Tsuchida appropriately applied the *Twombly* standard, and agrees with
14 his reasons for making that recommendation. As a result, the court overrules this
15 objection, too.

16 Finally, Mr. Frazier argues that he should be permitted, once again, to amend his
17 complaint. (Obj. at 4, 6.) Mr. Frazier has, however, already had two opportunities to
18 address the deficiencies that Magistrate Judge Tsuchida identified in his May 24, 2023
19 order granting leave to amend and has failed to do so. (5/24/23 Order; Am. Compl.; 2d
20 Am. Compl.) Therefore, the court agrees with Magistrate Judge Tsuchida's
21 recommendation that Mr. Frazier be denied further leave to amend his complaint. (*See*
22 R&R at 11-12.)

1 In sum, having considered Mr. Frazier's objections, and having reviewed
2 Magistrate Judge Tsuchida's first and supplemental findings and recommendations de
3 novo in light of those objections, the court OVERRULES Mr. Frazier's objections and
4 ADOPTS in full Magistrate Judge Tsuchida's first report and recommendation and
5 supplemental report and recommendation.

6 **IV. CONCLUSION**

7 For the foregoing reasons, the court hereby ORDERS as follows:

8 (1) Magistrate Judge Tsuchida's first report and recommendation (Dkt. # 15)
9 and supplemental report and recommendation (Dkt. # 17) are ADOPTED in full;

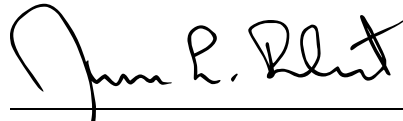
10 (2) Mr. Frazier's objections (Dkt. # 16) are OVERRULED;

11 (3) Mr. Frazier's motion for temporary restraining order and preliminary
12 injunction (Dkt. # 13) is DENIED;

13 (4) Mr. Frazier's amended complaint (Dkt. # 12) and second amended
14 complaint (Dkt. # 14) are DISMISSED without prejudice; and

15 (5) The Clerk is directed to send copies of this order to the parties and to
16 Magistrate Judge Tsuchida.

17 Dated this 15th day of August, 2023.

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19 
20 JAMES L. ROBART
21 United States District Judge
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